

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Civil Suit 35 of 2008

CIVICON LIMITEDPLAINTIFF

VERSUS

RICHFIELD ENGINEERING LTD.DEFENDANT

R U L I N G

Civicon Ltd, the plaintiff herein, took out a summons dated 15th December 2008, pursuant to the provisions of Order VI rule 13 (1) (a) and (d) of the Civil Procedure Rules. In the aforesaid summons, the plaintiff applied for the defendant's defence to be struck out on the basis that the same is scandalous, frivolous and vexatious and that the defence is an abuse of the court process. The plaintiff also prayed for entry of judgment as prayed in the plaint. The summons is supported by the affidavit of David Horsey sworn on 15th December 2008. Richfield Engineering Ltd, the defendant herein opposed the application by filing the replying affidavit of Jitendra Brahmhatt sworn on 6th February 2009.

When the application came up for interpartes hearing, learned advocates agreed to rely on written submissions. They however appeared before this court to make brief oral highlights. I have considered the material placed before me and the oral and written submissions tendered by learned counsels. In the plaint dated 9th December 2008, the plaintiff prays for judgment against the defendant in the sum of Kshs.3,856,710/-. The aforesaid sum is said to be due and owing from the defendant to the plaintiff on account of services rendered to the defendant by the plaintiff. The plaint does not specify what kind of services but it alleges that the defendant knows the particulars. It is alleged an invoice was sent to the defendant for settlement but the defendant has instead refused to settle the debt. The defendant filed a defence denying the plaintiff's claim. The defendant alleged that the defendant is unable to pay the debt because the plaintiff has failed to supply the particulars to the defendant. The defendant in fact requested for particulars which the plaintiff supplied under order VI rule 8 of the Civil Procedure Rules. The defendant still persisted in its refusal to settle the debt despite being served with the particulars. This act prompted the plaintiff to file this application.

It is the argument of the plaintiff that the defendant hired the services of its crane at a cost of Kshs.7,500/- per hour on 23rd September 2007. It is alleged that the defendant used the crane for 443.3 hours giving rise to a charge of Kshs.3,324,750/- plus value added tax (VAT) at 16% i.e. Kshs.531,960/- making the total claim to be Kshs.3,856,710/-.

An invoice was sent to the defendant but the defendant declined to settle it hence this suit. It is the argument of the plaintiff that the statement of defence is filed with the intention to delay the conclusion of this matter. In essence, it is the plaintiff's belief that there are no triable issues. The defendant opposed the summons by stating that the plaint is vague and evasive on how the debt was arose. The defendant has argued that it should be given a chance to amend the defence in view of the fact that the plaintiff had given the defendant further and better particulars.

I have taken into account all the issues raised in the pleadings by the submissions made by learned counsels. There is no doubt that the plaintiff through the affidavit of David Harvey has put forward a detailed schedule of how the sum claimed in the plaint arose. These details appear to have been forwarded earlier to the defendant prior to the filing of this suit and upon the request made by the

defendant. There is evidence that the defendant attempted to settle the entire debt by paying Kshs.400,000/- which amount was rejected by the plaintiff. After anxiously considering the issues herein, I am convinced the defence filed herein is frivolous and vexatious. The same raises no triable issues. It would appear the same is calculated to delay the speedy conclusion of this case. On this account I find the defence to amount to abuse of the court process. Basically, the same is filed with the sole intention of delaying the determination of the suit. Consequently this summons is allowed as prayed with costs of the suit to the plaintiff.

Dated and delivered at Mombasa this 8th Day of April 2009.

J. K. SERGON

J U D G E